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## SIX AUTHORS IN SEARCH OF A CHARACTER

IRA C. LUPU\*

I should have seen it coming. First, Jim Lindgren called to invite me to prepare an Introduction to this Symposium. When I expressed initial reluctance to invest time in writing something that essentially summarized the work of others, Jim assured me that the assignment was not that at all. "I would like you to write an essay that reflects your own view of the relations between authors and student law review editors," Jim said.<sup>1</sup>

I agreed to write the piece, and soon thereafter I received a letter from this law review's editor-in-chief, in which he stated "It is my understanding that you will be writing a foreword that pulls all these [Symposium] articles together." Wow. Here I am trying to write about "The Struggle Between Author and Editor over Control of the Text," and I find myself at the center of a "Struggle Between Faculty Symposium Editor and Student Editor-in-Chief for Control of the Introduction." So much for the Chicago-Kent model of a law review in which the faculty direct the substantive core of the enterprise.

The concept of struggle, however, may indeed be the key to deeper appreciation of the author-editor relationship. Struggles include zero-sum games in which there are clear winners and losers, but they also encompass cooperative exertions to overcome common obstacles. Indeed, even if the text has its own life—an animal uncaged—the author and editor may work together to train or domesticate it. The "struggle" between authors and editors thus extends beyond the combat over whose view of the text will prevail to a larger effort to make the work the best it can be.

\* Louis Harkey Mayo Research Professor of Law, National Law Center, The George Washington University. My thanks to Jim Lindgren and Philip Hamburger for inviting me to moderate the session (sponsored by the Provisional Section on Law Reviews) on this topic at the AALS Annual Meeting in Orlando in January 1994, to Jim Lindgren and the editors of the *Chicago-Kent Law Review* for the invitation to prepare this Introduction, and to Nancy Altman, Philip Hamburger, and Greg Maggs for helpful comments on an earlier version of this essay.

1. He said something like that. The quote is a Janet Malcolm-ization. See *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991) (alteration of quotes by journalists does not constitute actual malice so as to forfeit constitutional privilege "unless the alteration results in a material change in the meaning conveyed by the statement").

My title to this Introduction can be understood in light of this latter, nobler version of the struggle.<sup>2</sup> Regardless of an author's level of intelligence, learning, or literary skill, she will inevitably realize that expressing herself clearly and persuasively on complex matters is never easy. Before letting go of a piece, authors are in discourse with a structure of thought in their own heads; afterwards, the piece becomes part of a discourse with the thoughts in the heads of all the readers.<sup>3</sup>

Graceful and effective management of this metamorphosis, which takes place through the editing process, demands virtues of various kinds. Editors purport to be helpful partners in this enterprise, and sometimes they are. Even in the best of circumstances, however, working with an editor will frequently create a collection of stresses that challenge an author and test her character.

These stresses can take many forms. First, a good edit will call into question some of the author's premises, explicit or otherwise. Who among us is so free from self-doubt that we react with total equanimity to a challenge to our principles for organizing the legal world?

Second, a student edit is a challenge to a master by an apprentice.<sup>4</sup> The surface reaction to this may be "How dare this professional beginner challenge my prose or my premises," but the underlying sentiment may be closer to "What will my peers think of this piece if this rookie can find all of these flaws in it?"<sup>5</sup>

2. I have adapted the title from that of Luigi Pirandello's distinguished play, *Six Characters in Search of An Author*.

3. Professor Tushnet's essay in this collection reflects to some extent on this problem. Mark Tushnet, *The Death of An Author, By Himself*, 70 CHI.-KENT L. REV. 111, 115 (1994) (suggesting that different communities of readers may interpret a text differently).

4. Professor Epstein's discussion of the way in which he edits suggests that the dynamics of faculty edits will be different from those likely in the case of student edits. Richard Epstein, *Faculty-Edited Law Journals*, 70 CHI.-KENT L. REV. 87, 92-94 (1994).

5. To be fair, I should qualify this characterization of editors as beginners with my observation that the learning curve of student editors is very steep. They may learn and change a great deal during their year in office. The likelihood of such growth makes me deeply skeptical of the frequent call for empirical studies of the author-editor relationships. See Wendy Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 544 (1994); see also Gregory E. Maggs, *Just Say No?*, 70 CHI.-KENT L. REV. 101, 102-05 (1994). Student editors will not say the same things in September as they will say in January or May. They also are highly unlikely or unable to be deeply introspective about an experience that flies by so fast. And the articles editors at a given journal may be so different in temperament and style from one year to the next that, even within a single journal, the data will not fall into any systematic pattern over time. Authors are repeat players with their own growth curves, and so will develop a set of nuanced and evolving observations over their careers. Moreover, as Maggs reports, more prestigious authors may get better treatment, Maggs, *supra*, at 104-05 to the extent prestige is correlated with seniority, as it inevitably is to some extent, authors' views of author-editor relations may tend to mellow with age.

Third, authors frequently know where the unsolved problems of their work reside, and they worry about what to do if these novice editors don't discover those difficulties. I have never sent out a piece without an awareness that it has sentences that are awkward, paragraphs that do not connect very well with the ones immediately before and after, and large themes that are imperfectly identified (among other flaws). I find myself hoping that editors highlight these problems and thereby prod me to edit myself. When editors ignore the parts of a piece that I sense need work, I have to overcome the temptation to leave those parts unimproved.

Fourth, authors know they will ultimately be exposed to the judgment of their academic peers. As much as authors want to be done with a piece, they have to let it go when they are finished; at some point, therefore, the opportunity to correct mistakes becomes foreclosed. I can feel my anxiety level rise whenever I relinquish a piece for the last time, because it is inevitably imperfect and I bear full responsibility for its flaws.

I don't think editors become uneasy at that same moment, because they have much less at stake. Indeed, it is the authors' sense of ultimate accountability that leads them to bristle so much in struggles with editors. When the battles are over and the article is in the law libraries, only the author will get praise or blame for what is over her name. Thus, when the editors of the *University of Chicago Law Review* announce that the author has the last word,<sup>6</sup> they are leaving authority and responsibility precisely where it belongs.

To a large extent, the content of an author's character will determine whether these stresses doom the author-editor relationship to contentiousness, or alternatively allow the author and editor to work through the struggle together. In my appraisal, the two most crucial aspects of authorial character are pride and humility. The perfect author has an optimum mix of the two. Pride of authorship is a good so long as it produces fierce dedication to the quality of the enterprise, a willingness to fight for what's important, and an awareness of the consequences of good and bad authorial decisions. Every so often I have tried too hard to please an editor, usually by acceding to some change the editor thought was clever or amusing even though I did not. Whenever I reread those lines, my stomach turns a little, and I am reminded to protect my pride in the next round.

6. See The Articles Editors, *A Response*, 61 U. CHI. L. REV. 553, 558 (1994) (statement of journal policies on article selection and editing).

Of the two qualities, however, humility is by far the more important. I follow a simple rule whenever an editor changes a sentence or challenges an idea. Whether or not I like the editor's correction, I always treat the editorial input as an invitation to revisit a thought or its expression. However frequently I accept an editor's revision, I far more frequently use the proposed revision as a springboard for my own rewrite. Indeed, I try to look at my original sentence, and the editor's proposal, as a self-editor as well as an author. When I can achieve that sort of simultaneous detachment from and proximity to the work, I always come away with a profound sense of improvement in the piece.<sup>7</sup>

In several other ways, addressed in part by the other contributions to this collection, authorial character is central to the success of academic scholarship. Professor Epstein's essay, in its focus on faculty-edited journals, highlights the possibility of professional peers interacting in a dignified and mutually advantageous way.<sup>8</sup> In contrast, Professor Lindgren's essay on relations between student editors and faculty authors is riddled with stories evincing character flaws on both sides of the arrangement.<sup>9</sup> Perhaps the strange role reversals and mutually misperceived power imbalances in the relationship between faculty author and student editor will inevitably produce examples of bad behavior.

Professor Maggs is explicit about the role of character; when he counsels authors to "just say no" when they are determined to preserve their own version of the text, he is counselling a practice of intestinal fortitude. Authors are sometimes afraid to exhibit this quality, but not because they fear the piece will be yanked. Even rank beginners among authors know that that almost never happens. Authors have more subtle fears concerning noncooperation elsewhere if they alienate their editors. Because the author-editor relationship in-

7. I rarely restore a sentence to its pre-edited form. Only once in my career have I had an edit so aggressive and poor that this strategy resulted in systematic depreciation of the piece. I take Professor Epstein's comments about his lengthy letters to authors concerning the substance of a piece, *see* Epstein, *supra* note 4, at 92, and about initiating stylistic revisions, *see id.* at 92-93, to be in the same spirit as my remarks in the accompanying text concerning pride and humility.

8. *Id.* at 91.

9. James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 CHICAGO-KENT L. REV. 95, 96-97 (1994) (listing corrupt practices of student editors and faculty authors). Professor Lindgren asserts that corrupt faculty practices are "fairly rare occurrences." *Id.* at 97. I am not so sure. I doubt that there is any way to know for certain how often either side transgresses. Among faculty, the most commonplace corruption of which I am aware involves deceptive communications with journal editors concerning the market status of one's article. *See id.* (noting "false claims of acceptances from other law reviews, hoping to induce editors to take an article").

volves constant exchange and implicit bargaining, authors sense that they must be selective in choosing when to fight rather than switch. Professor Epstein's coyote-stag metaphor<sup>10</sup> seems apt as applied to authors, not editors, because authors sense the possibility of being worn down by the unspoken but ever-lurking demand to give as much as they take. Moreover, if the exchange process is symmetrical but the ultimate accountability for the piece is not, authors quite reasonably begin to fear that they will be net losers.<sup>11</sup> Should anyone be surprised when, under such psychological conditions, an author's temper begins to fray?

Professor Althouse's essay reflects on authorial character in yet a different way. She explains the homogenization of law review prose by the pressure to conform to a methodology of expression associated with the conventional law review article.<sup>12</sup> She follows this with observations about the likelihood that student editors will tend to push such pieces even further in the direction of conventional structure and prose.<sup>13</sup>

Several comments on the phenomena described by Professor Althouse seem appropriate. Achieving tenure should help faculty authors resist the pressure to conform, but doesn't always make a significant difference. Unfortunately, many of the folks in our business were never very creative (after all, we're the ones who chose to go to law school). Moreover, the exertion of getting to tenure may lead some who have creative potential to internalize a set of noncreative norms of expression. It may help to recall that many of the most

10. *Edited Transcript of the Proceedings at the AALS Proposed Section on Law Reviews and Scholarship*, 70 CHI.-KENT L. REV. 117, 120 (1994).

11. Here I disagree with Professor Maggs' assertion that authors will fight less than editors because authors will write more pieces than editors will edit. Maggs, *supra* note 5, at 106. First, in any given year, most articles editors will edit more pieces than the average scholar will write. Second, the ultimate accountability for the piece will give authors far greater incentives than editors to fight for their preferred version of the text.

A different set of sirens may beckon when an author publishes in a journal far higher in prestige than those to which he is accustomed. In such cases, the author may succumb to editing he dislikes out of fear of injuring his reputation at a very fine journal and school. This is a bad choice; except in an extreme case, the work itself rather than the process of its production will determine the author's reputation. Moreover, law journals have very little institutional memory, article editors are unlikely to badmouth authors to faculty at the journal's home school, and reputable faculty members will ignore or disparage article editors who do so.

12. Ann Althouse, *Who's to Blame for Law Reviews?*, 70 CHI.-KENT L. REV. 81, 82-83 (1994).

13. *Id.*

prominent legal academics in America have distinctive scholarly voices.<sup>14</sup> Unique vision and unique voice tend to coincide.

Professor Tushnet's contribution to this Symposium<sup>15</sup> is the most difficult to pigeonhole along character lines. On the surface, his piece pushes off from ideas of integrity, both of expression and of personal virtue.<sup>16</sup> But the complaining tone of his essay, which turns out to be a lament that he has not been properly understood in a prior work,<sup>17</sup> is hard to square with standard conceptions of authorial responsibility.

Indeed, of all the essays in this collection, Professor Tushnet's contribution seems the least responsive to the Symposium's call. Suggesting that editing may not make much difference in the way a piece is ultimately construed,<sup>18</sup> Professor Tushnet only obliquely addresses the tension in the relationship between faculty author and student editor. Instead, he focuses on the limits of language, and the difficulty of addressing multiple communities with a single work.

Professor Tushnet's rejection of what he calls the Romantic view of authorship raises large questions, but I think it fair in the context of this Symposium to suggest that he simply protests too much: He complains that a section on narrative jurisprudence, in his article, *The Degradation of Constitutional Discourse*, has been misconstrued as being more hostile to racial narratives than he intended. Yet he could not reasonably expect readers to ignore so dramatic a title, or to overlook his introductory section which refers to "failures of integrity and judgment"<sup>19</sup> in the stories he discusses. With such an inflammatory set of leads, Professor Tushnet's critical commentary on any form of

14. I take Professor Althouse to be in agreement with this. *Id.* at 85 ("if your deviations from convention are forthright and well done, you will find student editors who respect your writing"). The cool detachment of Judge Posner, the tone of passionate commitment of Professor MacKinnon, and the acerbic sarcasm of Justice Scalia come to mind as exemplars of distinctive and successful styles.

15. Tushnet, *supra* note 3.

16. *Id.* at 112-13.

17. Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

18. Tushnet, *supra* note 3, at 111-12 (suggesting that "the effects of [editorial revision] are likely to be significantly smaller than the already-in-place routines that the larger audience of readers uses in reading the ultimate product") (footnote omitted).

19. Tushnet, *supra* note 17, at 251. Patricia Williams and Clarence Thomas appear to be the most direct targets of the accusation of non-integrity. See *id.* at 268 (describing Williams' tone as one of "moral superiority"); *id.* at 267-70 (expressing disappointment that Williams did not confront or examine anti-Semitic remarks she claims to have overheard); *id.* at 291 ("a person ordering his or her affairs would almost certainly find the prudent course to be concluding that Thomas knowingly lied" in his confirmation hearings). Linking criticism of a leading critical race theorist with a charge of perjury against a conservative African-American Supreme Court Justice was bound to produce a stormy reaction.

discourse was bound to produce a hostile reaction from readers who find value in that form.<sup>20</sup>

Perhaps Professor Tushnet's problem arose from *failure* to struggle with an editor for control of the text. If he had been challenged to make himself less oblique in the section on narrative jurisprudence in *Degradation of Constitutional Discourse*, he may not have opened himself up to the criticism of which he now complains. Indeed, if struggle can lead to improved work, the best possibility would have been for Professor Tushnet to find a student editor familiar with racial narratives and sympathetic to the view that they make a valuable contribution to thought about constitutional law. In those circumstances, one might expect an editor-author dialogue that would have fully alerted him to all the [mis]constructions that his work inevitably invited.<sup>21</sup>

One author-editor context that others in this Symposium do not address is that which arises in symposia. Preparing a symposium contribution, like this one, presents its own set of temptations. When authors write for general submission in the law review market, the incentive structure will lead them to strive for excellence. One is competing with similar efforts by other able scholars, and one has reason to believe that greater effort will produce greater reward in the form of prestige placement.

In contrast, an invitation to write for a symposium presents a form of placement security and elimination of competition. The review is going to publish your work unless it falls below some fairly low standard of acceptability; indeed, the threshold for withdrawing an in-

20. Professor Tushnet's footnote attempt to rescue his critique of narrative from the pejorative implicit in the word *degradation* in his title, *id.* at 251 n.3, was inevitably going to be perceived as feeble or disingenuous by critical readers. Surely one of the founders of the Critical Legal Studies movement expected that his work would be read critically, and that this particular section of the work would be read critically by critical race theorists and their allies. Whether he should have expected that one of his colleagues would use the work as an excuse to accuse him in print of being an academic elitist threatened by new forms of discourse emerging from women and members of racial minorities is a more difficult question. See Gary Peller, *The Discourse of Constitutional Degradation*, 81 GEO. L.J. 313, 336 (1992). Perhaps members of the Georgetown faculty, and a few unfortunate others, are more familiar than most with the degradation of academic discourse.

21. Professor Tushnet knows how to be straightforward. For example, he has described his first reaction to the Supreme Court's decision in *Lynch v. Donnelly*, 465 U.S. 668 (1984) (upholding the publicly sponsored display of a nativity scene at Christmas time) as "a simple slap in the face, a statement that my sensibilities as a Jew counted for nothing." Mark Tushnet, *Religion and Theories of Constitutional Interpretation*, 33 LOY. L. REV. 221, 222 (1987). He went on to describe Justice O'Connor's concurring opinion in *Lynch* as "in the worst tradition of genteel anti-Semitism." *Id.* (footnote omitted). One need not subscribe to a Romantic view of authorship to believe that most readers clearly understood what he meant by both of those statements.



vation will be far, far below the same journal's standard for accepting an article in competitive submissions. Authors know this, and must fight the temptation to take less care on a symposium piece than others. Editors may face similar temptations to shirk in the symposium context, in which time pressures, the burden of precommitments to authors, and the sense of the symposium as a unified whole may undercut the rigor of individual editorial effort.

The question of character emerges in yet another way in the production of symposia. In an ordinary law journal issue containing unrelated pieces, a slowly progressing article can be bumped into a later issue, just as a fast-developing one can be accelerated. A symposium issue, however, gets to print as quickly as its slowest author. Authors in this context therefore have special obligations to one another. When the symposium faces external timeliness concerns, these obligations are heightened. Meeting deadlines under such circumstances is not simply professional courtesy; it is (or should be) a strenuous matter of professional responsibility.<sup>22</sup>

Despite the diffuse nature of the character themes in all of the essays (including this one) in this Symposium, I am convinced that the authors represented here all believe in their own way that integrity matters. I simply think that it is incumbent upon those of us who care about the law's integrity to reflect that quality in our professional lives. Doing so demands intellectual honesty, but it also requires self-awareness. That self-awareness must extend to our relationships with others in the profession, including student editors.

Perhaps these abstractions can be illustrated by an author-editor story that shows the benefits of cooperation rather than emphasizes the costs of struggle. In 1988, the *Harvard Law Review* invited me to prepare a review of the second edition of Laurence Tribe's treatise on constitutional law.<sup>23</sup> Soon after I received the invitation, I encoun-

22. I have strong feelings about deadlines, which are so much part of a lawyer's professional world. I try very hard to respect journal deadlines, and to let the journal know in advance if I will have any trouble meeting one. I always ask the journal to specify early in the editorial process when my turns will come, and how much time I will have at each one. In my experience, only a very few law reviews (all with excellent reputations) negotiate with authors a complete editorial schedule, with dates certain on both sides, prior to the beginning of the process. These journals strictly adhere to the set schedule once it has been fixed. When editors behave this way, authors are more likely to do so. When editors take three months to edit my work and want it back in three days, they are being unreasonable and I tell them so.

23. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* (2d ed. 1988).

tered Sargent Shriver<sup>24</sup> on a street corner in the District of Columbia. He and I had never met, and he had no idea who I was until I introduced myself, told him of my new writing project, and asked him how he happened to appear in the Preface to the first edition of Professor Tribe's treatise.<sup>25</sup> Mr. Shriver responded that he and Tribe had once had a conversation in which Shriver had encouraged Tribe by telling him that he was the only legal academic in the country with the *chutzpah* to tackle a project of this scope.

Shriver's seemingly good-natured use of the word *chutzpah* stuck with me. In fact, I believed that the book was hugely ambitious but not always up to its goals. As I wrote the review,<sup>26</sup> I fretted about how to express this thought, with the proper mixture of candor and respect, in Professor Tribe's "home journal." My moment of truth arrived in the review's final paragraph, in which I focused on Professor Tribe's claim in the second edition that he hoped to build bridges that would unite the theory and practice of constitutional law.<sup>27</sup> After explaining briefly why that theory-practice gulf seemed so wide, I needed a concluding sentence.

I rewrote that sentence at least fifty times. On my own, I rejected forty-five versions of it. My editor, Jordie Steiker,<sup>28</sup> was sensible and firm enough to repel another four—they were all cryptic and awkward. Finally, I arrived at a formulation that captured the thought I wanted to express. Referring explicitly to Professor Tribe's avowed effort to bring together the rapidly diverging worlds of academic theory and constitutional law practice, I wrote: "Those who understand our intellectual situation can appreciate the courage and confidence required to undertake so formidable an enterprise."<sup>29</sup>

24. Shriver, a brother-in-law of Senator Edward M. Kennedy, was the first director of the Peace Corps and George McGovern's Democratic running mate in the 1972 presidential election.

25. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* vii (1978):

Finally, I add an expression of special gratitude to the several people whose forbearance and encouragement persuaded me to persist in those gloomy periods when I genuinely doubted that I had the will. Chief among those to whom I owe such very special thanks are my parents, my wife Carolyn, and my friend Sargent Shriver. It was a conversation with him one winter morning that convinced me not to abandon this project. It is to him, as well as to my parents, my wife, and my children Mark and Kerry, that I dedicate this book.

Professor Tribe reprints the preface to the first edition in the second edition. TRIBE, *supra* note 23, at vii-xi.

26. Ira C. Lupu, *Risky Business*, 101 HARV. L. REV. 1303 (1988) (reviewing TRIBE, *supra* note 23).

27. TRIBE, *supra* note 23, at iii.

28. Now Professor Jordan Steiker of the University of Texas Law School.

29. Lupu, *supra* note 26, at 1322.

A month after the review was published, my then-colleague Stanley Fisher approached me in the law faculty lounge at Boston University and told me how much he had enjoyed the review. "I really liked the last sentence," he added.

I smiled. I thanked Stanley for the kind words, and I silently thanked Jordan Steiker for holding out until we had a winner. I think that he, Sargent Shriver, and I all knew that the only other viable option for a concluding sentence was "What *chutzpah!*" That choice, however, would have received no compliments from colleagues. Indeed, by stepping off uneasily into Dershowitz-land, the two-word version would have departed from the otherwise intellectual tone of the piece and turned a half-compliment into a half-insult. Self-serving as it may be, I believe that knowing the difference between them, and choosing the more textured and respectful version, required at least a smidgen of character.